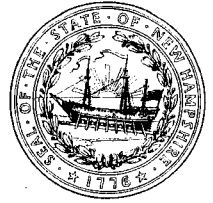




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Begin Construction, LLC
Attn: Will Begin
Post Office Box 473
Warner, NH 03278-0473

Re: 1688 Hatfield Road, Hopkinton
Wetlands Bureau File #2003-0854

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-051**

October 10, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Begin Construction, LLC, pursuant to RSA 482-A and New Hampshire Administrative Rule Env-C 614. The Division is proposing that fines totaling \$4,000 be imposed against Begin Construction, LLC, for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Begin Construction, LLC ("Begin"), is a New Hampshire limited liability company having a principal office address of 183 West Main Street in Warner, New Hampshire and a mailing address of P.O. Box 473, Warner, NH 03278. Will Begin is a member and the registered agent for Begin with a registered office address of Harshorn Lane in Warner, New Hampshire and a mailing address of P.O. Box 19, Warner, NH 03278.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Begin was the deeded owner of land located on 1688 Hatfield Road in Hopkinton, New Hampshire more particularly described on Town of Hopkinton Tax Map 217 as Lot 33 ("the Property") between September 4, 2002 and April 25, 2003.

4. On February 7, 2002, DES Wetlands and Non-Site Specific Permit 2001-2410 (the "Permit") was issued to Anthony Chouinard, Sr., & Oliver Burnham to temporarily impact 500 square feet of forested wetland and install a 15 inch by 15 foot temporary culvert for access to upland in the back of the Property to place an effluent disposal field. The wetlands on the Property were depicted on a plan created by Arthur Siciliano Jr., LLS, dated November 2001 and revised January 23, 2002. The Permit required that all disturbed wetland areas be restored immediately following operational approval by the DES Subsurface Bureau for the new effluent disposal area.
5. On September 6, 2002, Begin purchased the Property from Anthony Chouinard Sr. & Oliver Burnham.
6. Operational approval from the DES Subsurface Systems Bureau was granted on October 23, 2002. The Wetlands Bureau permit approval was subject to the following project relevant specific conditions:
 - a. "All work shall be in accordance with plans by Arthur Siciliano Jr., dated November 2001 and revised January 23, 2002, as received by the Department on January 28, 2002."
 - b. "Disturbed wetland areas shall be restored immediately following operational approval by DES Subsurface Bureau for the new effluent disposal area, including regrading to original contours and stabilization of disturbed soils."
7. On April 25, 2003, Stephen and Bethany Dermody purchased the Property from Begin.
8. On May 7, 2003, DES received a complaint that fill had been placed in a wetland at the Property without a DES permit. The complaint was assigned Wetlands Bureau Complaint File #2003-0854.
9. By letter dated May 14, 2003, DES notified Begin that DES had received the complaint. DES also requested that Begin refrain from further work and respond to the allegation in writing within 20 days of receipt of the letter.
10. On May 29, 2003, DES received a fax from Begin which indicated to DES staff that Mr. Begin was aware of the Wetlands Bureau permit #2001-2410 (obtained by the previous owner) as well as the DES Subsurface Systems Bureau approval. Mr. Begin also stated in the FAX that the Property had been sold.
11. On September 30, 2005, DES personnel conducted a site inspection of the Property and observed the following:
 - a. The delineated wetland between the house and the effluent disposal field had been landscaped and converted to lawn. Approximately 4500 square feet of wetland had been impacted.
 - b. The temporary impact granted in Wetlands permit 2001-2410 had not been restored.
12. On October 2, 2005, Mr. Dermody sent e-mail correspondence to DES which stated that when the Dermodys viewed the Property at the time of purchase that the back yard had been

cleared and graded and that neither the builder nor the real estate agent had informed them that the backyard was to remain, or be restored to, wetland.

13. On October 25, 2005, DES issued Letter of Deficiency No. WET 2005-037 ("LOD") to Begin for impacting approximately 4,500 square feet of wetland and for not restoring the temporary impact approved in Wetlands permit #2001-2410. The LOD requested that Begin submit a restoration plan to restore the impacted wetlands.

14. On November 22, 2005, DES received correspondence from Begin. Included in the response were photographs labeled June/July 2003 showing that the back yard at the Property in the location of the previously delineated wetland had been cleared, stumped and graded.

15. On May 3, 2006, DES personnel met with Will Begin, William Nichols (the subcontractor for Begin), Mr. and Mrs. Dermody, and the Dermody's attorney Peter McGrath. During the meeting the Dermody's provided photographs of the Property that were taken prior to their purchase, as evidenced by a "For Sale" sign on the Property. The photographs showed the house fully completed and that the back yard was stumped and graded prior to their purchase.

16. During the May 3, 2006 meeting Mr. Begin admitted that the wetland in the back yard had been stumped at the time the house site was being developed when he still owned the Property. He also admitted that he was aware of the wetlands permit and delineation but didn't know that stumping required a permit.

17. Begin was the owner, developer, and general contractor for the Property at the time the wetlands were stumped and regraded.

18. Begin had been the subject of an informal DES compliance action prior to this violation (under Wetlands Bureau File # 2001-1912) for leaving slash in wetlands on property on Galloping Hill Road in Hopkinton, New Hampshire. At that time, DES personnel met with Mr. Begin at the property to discuss wetland regulatory issues. Mr. Begin on behalf of Begin voluntarily complied.

19. DES records also indicate that Mr. Begin was familiar with the DES Wetlands permitting process prior to this violation as evidenced by Wetlands Bureau file #2001-0312 in which a permit was issued to Begin to temporarily impact forested wetlands to install a well and waterline on property on Tracy Road in New London, New Hampshire.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Begin Construction, LLC, has violated RSA 482-A:3 by stumping and regrading approximately 4,500 square feet of wetland for lot development in excess of Wetlands Permit 2001-2410. For this violation, Env-C 614.05(a)(6) authorizes a fine of \$2,000.

2. Begin Construction, LLC, has violated RSA 482-A:3 by failing to comply with Project Specific Condition 2 of DES Wetlands and Non-Site Specific Permit 2001-2410. Project Specific Condition 2 specifies that the disturbed wetland be restored immediately following operational approval by the DES Subsurface Systems Bureau. For this violation, Env-C 614.06(f) authorizes a fine of \$2,000.

The total fine being sought is \$4,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Begin is required to respond to this notice. Please respond no later than November 7, 2006 using the enclosed colored form.

1. If Begin would like to have a hearing, please have an authorized representative sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If Begin wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance form, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If Begin chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

Begin is not required to be represented by an attorney. If Begin chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Respondent committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the Respondent committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Respondent proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** the Respondent did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the Respondent did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Respondent was making a good faith effort to comply with the requirement that was violated.


3. Respondent has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the Respondent's case which was not known to the Division at the time the fine was proposed.

**** Pursuant to Env-C 601.09(d) and (e), the fine shall be increased by 10% for each of six (6) possible aggravating circumstances listed therein that the Division proves, by a preponderance of the evidence, apply in this case; up to the maximum fine stated in the statute under which the Division is seeking the fine.**

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Begin committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Respondent's opportunity to present testimony and evidence that Respondent did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Respondent has any evidence, such as photographs, business records or other documents, that Respondent believes show that Respondent did not commit the violation(s) or that otherwise support Respondent's position, the Respondent should bring the evidence to the hearing. Respondent may also bring witnesses (other people) to the hearing to testify on Respondent's behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If Begin Construction, LLC, has any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.


Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

- ec: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Dawn Buker, DES Wetlands Bureau
- cc: Gretchen Hamel, Administrator, Legal Unit
Town of Hopkinton Board of Selectmen and Conservation Commission
Will Begin, P.O. Box 19, Warner, NH 03278-0019 (*registered agent*)

***** RETURN THIS PAGE ONLY *****

**BEGIN CONSTRUCTION, LLC, IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN NOVEMBER 7, 2006

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Begin Construction, LLC:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Begin Construction, LLC:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$4,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.